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OGC Has Reviewed

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8 June 1954

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MEMORANDUM FOR: Chief of Administration, Deputy Director (Plans)

SUBJECT : Use of [REDACTED] Plane for the Return of Personnel to the United States for Compassionate Reasons

REFERENCE : Memo, undtd, for DDCI fr CAO/DDP, same subject

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1. You have requested my comments upon the referenced memorandum prior to submission to General Cabell for final action. It is my understanding that the return of personnel or their dependents to the United States for compassionate reasons on the [REDACTED]

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plane will be countenanced only where the plane is utilized for an [REDACTED] and under no circumstances will passengers be carried on flights transporting [REDACTED]. The possibility, however, must be assumed that personnel may be transported for compassionate reasons where the primary objective of the flight is the transport of [REDACTED]

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2. The time spent so far by this Office on this problem has brought us reluctantly to the conclusion that not only would full research be a lengthy process, but would in some respects be inconclusive due to the present state of the law on certain considerations. They are recited herewith not to present a bar to the proposed use of the plane, but to make sure that in deciding this question possible liabilities of a somewhat indeterminate nature are considered.

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3. We believe that waivers of liability should be obtained from employees and dependents traveling in this manner, following the Air Forces' practice. However, under present court decisions there is no assurance that such a waiver would avoid liability under the Federal Tort Claims Act in the event of an accident due to negligence of Agency employees. This does not present a serious problem in connection with employees traveling on orders, as might be done for home leave, because we believe they would be entitled to the benefits of the Employees Compensation Act. Those not entitled to orders should, we believe, be given a written authorization to board the plane for the proposed travel. Presumably this would not entitle them to compensation benefits.

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Consequently, such employees might have a valid Tort action if negligence could be shown. Dependents, since they are not covered by any other benefits, would similarly have a valid claim under the Tort Claims Act unless the waiver forestalled it.

4. Commercial insurance presents another potential liability difficult to estimate in advance. Even if coverage included this type of flight, which may or may not be the case, it is possible that for security reasons we would not want to give to the insurance company sufficient details of an accident for them to rule on the claim, particularly where a double indemnity provision may exist. Under such circumstances there is no clear-cut rule as to the obligation of this Agency to indemnify the individual concerned.

5. We wish to make quite clear that we do not consider the travel proposed illegal in itself. As a general practice such travel is well recognized as evidenced by the Department of Defense regulations in this respect. I believe we have equal authorities. It appears that the Government is not put to any additional expenditure of funds, and there is, therefore, no objection from this point of view. We are continuing to study the legal implications discussed above, and if we can get any definitive answers they will be supplied immediately. It is my personal belief that the waiver suggested would be of doubtful enforceability where negligence on the part of the Government or its employees could be shown, but as yet there is no court ruling specifically on this point.

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LAWRENCE R. HOUSTON
General Counsel

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